

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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FLOOR DEBATE

April 3, 2001 LB 489, 845

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Mr. Clerk, next item to the bill.

CLERK: Mr. President, Senator Brashear would offer AM1213. (Legislative Journal page 1273.)

SENATOR CUDABACK: Senator Brashear, you're recognized to open on AM1213.

SENATOR BRASHEAR: Mr. President, thank you. Members of the body, this morning at this particular opportunity I offer this amendment. It relates to a number of issues in civil and court procedure and is a combination and compilation of four bills which all have been heard by and advanced by your Judiciary Committee. I'd like to stress that these four bills contained within this amendment are technical in nature, can be relatively efficiently presented to you, and relate to procedure. The first part of the amendment, Sections 2 and 3, was LB 845 and it addresses two civil procedure subjects. First, the amendment changes the procedure for a summary judgment proceeding and, second, the amendment creates a new statute that provides rules for subpoenas regarding discovery of records in possession of a nonparty. Current Nebraska procedure requires that any material used at a hearing for summary judgment be offered and received in evidence by the court if the judge is to consider it. However, the current statute, 25-1332, states that the material considered by a judge needs to be "on file". That statute has been somewhat misleading...has been somewhat misleading reading as many attorneys construe the terms "offer in evidence" and "on file" to be two different things. So, out of an abundance of caution, practitioners have typically chosen to offer in evidence all of the matters. The amendment removes the word "file" and states that the material must be submitted in evidence, clarifying the ambiguity in order that no one inadvertently be tripped up. The amendment also includes additional types of evidence that a court can consider in a summary judgment proceeding. Presently the court, by